



National Aeronautics and  
Space Administration

**Principal Center for Regulatory Risk Assessment and Communication**

### ***REGULATORY SUMMARY***

## **All Appropriate Inquiry Rule on Property Transfer Site Assessments Takes Effect**

This information is provided as a service of NASA's Regulatory Risk Assessment and Communication (RRAC) Principal Center to inform you of regulatory developments. If you have further questions and/or need assistance with this matter, please contact Sharon Scroggins/MSFC (256-544-7932, [sharon.scroggins@nasa.gov](mailto:sharon.scroggins@nasa.gov)).

### **Introduction**

The U.S. Environmental Protection Agency (EPA) published a final rule in the *Federal Register* (FR) on 1 November 2005 ([70 FR 66070](#)) setting federal standards for conducting all appropriate inquiries (AAIs) into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for certain landowner liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The final rule took effect on 1 November 2006, one year following the date of publication in the FR. All AAIs must be conducted in compliance with the requirements included in the final rule or by following the standards set forth in the American Society for Testing and Materials (ASTM) E 1527-05 Phase I Environmental Site Assessment Process standard. Compliance with this final rule is mandatory to obtain protection from potential liability under CERCLA as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser. These requirements are applicable to any purchase, transfer, or sale of property made by NASA.

### **Background**

AAI is the standard for assessing the environmental conditions of property before it is acquired. The 2002 Brownfields Amendments to CERCLA require EPA to promulgate regulations establishing standards and practices for conducting all appropriate inquiries.

In order to rely on various defenses to liability under CERCLA, a potentially responsible party must show that the property was acquired after AAIs had been made into prior ownership and uses of the property. AAI provides property owners with three avenues of CERCLA liability protection:

- **Innocent purchasers or landowners** must perform AAI before purchasing a property and must buy without knowing, or having reason to know, about contamination on the property. This is the traditional approach to environmental due diligence.
- **Contiguous property owners**, whose property is not the source of the contamination but is "contiguous" to a facility that is the source of contamination found on their property, must perform AAI before purchase and must buy not knowing, or having reason to know, about contamination on the property. This condition protects the property owner from offsite migration.

- **Bona fide prospective purchasers** who buy property after January 11, 2002, must perform an AAI before purchase and may buy knowing, or having reason to know, of contamination on the property, while still enjoying the limitation on liability provided by the new definition. This is the first-ever protection for the owner of a site that has known contamination at the time of purchase.

All three protections require that an AAI be conducted before purchase. In addition, the Brownfields Law establishes that site characterizations or assessments conducted by entities with the use of brownfields grants awarded under CERCLA Section 104 (k)(2)(B)(ii) must be conducted in accordance with the AAI standards established under the law. Similarly, factors other than CERCLA liability protection may drive the need to follow AAI, including attorney recommendations and Phase I Environmental Site Assessment (ESA) protocols.

## Summary of AAI Requirements

AAIs must be conducted or updated within 1 year of the date of acquisition of a property. If all AAIs are conducted more than 180 days before the acquisition date, certain elements of the inquiries must be updated.

Many of the elements of an AAI must be conducted by, or under the supervision or responsible charge of, an individual who qualifies as an environmental professional as defined in the final rule. The final rule defines an environmental professional as someone who has at least one of the following:

- A current Professional Engineer's (P.E.) or Professional Geologist's (P.G.) license or registration from a state, tribe, or U.S. territory and have the equivalent of 3 years of full-time relevant experience
- A state or tribal issued certification or license to perform environmental inquiries as defined in Sec. 312.21 and 3 years of relevant full-time work experience
- A bachelor's degree or higher in science or engineering and 5 years of relevant full-time work experience
- Ten years of relevant full-time work experience

Environmental professionals must have the specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases, sufficient to meet the objectives and performance factors of the rule. An environmental professional must conduct the following elements of the AAI:

- Interviews with past and present owners, operators and occupants
- Reviews of historical sources of information
- Reviews of federal, state, tribal, and local government records
- Visual inspections of the facility and adjoining properties

- Commonly known or reasonably ascertainable information from the user and/or landowner
- Degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination from the user and/or landowner

The following additional elements of the AAI can be reviewed by the environmental professional or the user:

- Searches for environmental cleanup liens
- Assessments of any specialized knowledge or experience of the prospective landowner (or grantee)
- Assessment of the relationship of the purchase price to the fair market value of the property, if the property was not contaminated
- Commonly known or reasonably ascertainable information

The final rule requires that the results of an AAI investigation be documented in a written report. The written reports for each AAI must include the following:

- An opinion as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances at the subject property
- An identification of data gaps in the information collected for the inquiry that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances at the subject property, as well as comments regarding the significance of these data gaps
- Qualifications and signature of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

*"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."*

*"[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."*

- The environmental professional must include an opinion regarding additional appropriate investigation, if deemed necessary.

## Post-purchase Obligations

The AAI is the first, but not the only, step necessary to qualify for CERCLA liability protection. Over time, the owner must comply with any restrictions on the site's use and behave responsibly with regard to any contamination onsite. These obligations may have implications regarding decisions to sample for contamination during Phase I ESA activities.